

w/p

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA (Plaintiff) vs. STEVEN CARROLL DEMOCKER (Defendant)	Case No. CR 2008-1339 UNDER ADVISEMENT RULING re: State's Request to Hold Defendant In Custody Without Bond (Simpson Hearing)	FILED DATE: JAN 22 2009 12 O'Clock 9 M. JEANNE HICKS, CLERK BY: SHEETAL PATEL Deputy
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HONORABLE Thomas B. Lindberg

BY: Martha Wolfinger / Judicial Assistant
Division Six

DIVISION SIX

DATE: January 22nd, 2009

RE: STATE'S REQUEST TO HOLD DEFENDANT IN CUSTODY WITHOUT BOND
(Simpson Hearing)

On October 24, 2008, Defendant Steven Democker received an initial appearance before the Honorable Arthur Markham, Prescott Justice of the Peace, wherein the Justice of the Peace ordered the Defendant held without bond pending a hearing pursuant to *Simpson v. Owens*, 207 Ariz. 261, 269, 85 P.3d 478, 486 (2004). As the law requires, Judge Markham set a *Simpson* hearing for October 31, 2008, in the Prescott Justice Court. It never took place there.

An indictment was returned by the Yavapai County Grand Jury on October 31, 2008, charging the Defendant with first-degree murder, a class one felony, in connection with the death of Carol Kennedy; and burglary in the first degree of her residence, a class 2 felony. Arraignment was set for November 5, 2008, before the Honorable William Kiger. Upon a notice of change of judge filed by the defense relating to Judge Kiger, the matter was reassigned to the Honorable Ralph Hess. Judge Hess reset arraignment to November 10, 2008. Thereafter, upon a notice of change of judge by the prosecution as to Judge Hess, the matter was reassigned to the Honorable Thomas Lindberg, Division Six (6). By consent of the parties, the first appearance, however, including entry of plea, was held in this case on November 10, 2008, before Judge Hess.

On assignment of the case on November 12, 2008, Division Six set a *Simpson* evidentiary hearing to commence November 14, 2008. Defendant moved to continue the *Simpson* hearing and it was reset to November 21, 2008. On November 17, 2008, the date was again continued by agreement of both sides. The parties later agreed that the Court should set the *Simpson* hearing on December 23, 2008.

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The hearing commenced on December 23, 2008, and evidence was presented that day as well as on December 24, 2008, January 13, 2009, January 15, 2009. At the conclusion of the hearing the Court took the issue under advisement.

There is a constitutional right to bail in Arizona except when the "proof is evident or the presumption great" that the accused has committed one of the offenses listed in A.R.S. 13-3961; See Arizona Constitution, Section 2, Article 22. The listed offenses include capital murder. If the proof is not evident or the presumption is not great, the accused is entitled to bail, A.R.S. 13-3962.

The accused is presumed by law to be innocent of the charges. The State bears the burden of proving that "the proof is evident or presumption great" that the Defendant committed capital murder.

"Proof is evident or presumption great" is a burden of proof that approaches "clear and convincing" or "highly probable". It means clear, obvious, plain, manifest, indubitable, conclusive, apparent, or conspicuous to a Court exercising a dispassionate judgment. It certainly means more than probable cause, the burden of proof that the grand jury requires to bring an indictment. It is certainly more than preponderance of the evidence, the slight majority, over 50% of the proof, burden that a plaintiff in a civil action must present to prevail. The burden is not as high as proof beyond a reasonable doubt. But the State must prove to the Court that there is a strong presumption arising from a fair consideration of the evidence that the accused is guilty of a first degree capital murder. *In re Haigler*, 15 Ariz. 150, 137 P. 423 (1913); *Simpson v. Owens*, *supra*.

The Court finds the following based on the evidence presented at the hearing:

- V. Carol Kennedy, former wife of the Defendant, was killed at her residence at 7485 Bridle Path, in Williamson Valley, near Prescott, Yavapai County, Arizona, on Wednesday July 2, 2008;
- The cause of death was blunt force trauma to the head from seven blows causing the skull to be in fifty pieces; the autopsy also showed injuries to the right arm and there were also injuries on the posterior of the victim's body in the left shoulder area; patterned contusions on the right forearm of the victim were found by the medical examiner to be consistent with a shaft of a golf club; the forensic anthropologist indicated she could not rule out a #7 Big Bertha wood golf club as cause of the skull injuries but suggested other implements could possibly cause the skull injuries and should be compared; no other implements have yet been compared;
- Steven Democker and Carol Kennedy had been married since 1982, had two children in common, Katie and Charlotte; the couple had separated about five years prior, and had been granted a divorce on May 28, 2008, in DO 2007-0217 by Division One of the Yavapai County Superior Court; Steven was required to pay spousal support of \$6000 per month for a period of eight years commencing June 1, 2008; other community property was divided in the decree; Steven was to keep his book of business per the decree;
- The Court has not been shown evidence that there was fraud or perjury in the financial affidavit or in obtaining the disposition in the divorce or on tax returns; the State has not shown

evidence that the Steven Democker was aware of any intent by Carol Kennedy to report him to the IRS;

- the Bridle Path residence had been the former marital domicile for both Steven and Carol and their two daughters; on July 2, 2008, Steven resided in the Hassayampa Country Club area of Prescott about ten miles away;
- A person named James Knapp was living in the guest house on the Bridle Path property from early 2008 through a time after July 2, 2008; Knapp claimed to have been with his 11 year old child at his wife's house the evening in question;
- Carol Kennedy had two life insurance policies in amounts of \$250,000 and \$500,000; testimony indicated that Steven Democker was still listed as the beneficiary of these at the time of her death;
- Ruth Kennedy, a resident of Tennessee, mother of Carol Kennedy, had been on a long distance phone call with Carol Kennedy about 7:59 p.m. on July 2, 2008, when, according to Ruth, Carol said "oh no" and the phone disconnected; Ruth said she did not hear the dogs barking; Ruth tried to call Carol back but failed to get an answer; Ruth tried to call Steven Democker but failed to get an answer; she then called the police about 8:16 p.m.;
- A deputy from the Yavapai County Sheriff's Office, Matt Taintor, arrived at the residence on Bridle Path at about 8:52 p.m. and walked around the property, eventually shining a flashlight in a room facing the rear of the property and saw Carol Kennedy's body on the floor in a pool of blood; the testimony did not indicate where any dogs were on YCSO arrival; a cordless phone was located in the same area as the body;
- The patrol deputy contacted criminal investigations; a homicide investigation was commenced;
- On making entry the investigators confirmed that Carol Kennedy was dead and lying in blood in a room that had been converted to an office; the room had formerly been used by Charlotte Democker, daughter of the parties, as her bedroom; the investigators believed that the scene had been staged and the body had been repositioned with a ladder positioned in the room and bookcases overturned to make it look like Carol had fallen; the direction of blood spatter on the bookcases indicated that blood had been present prior to the bookcases being overturned; no blood was on the ladder but blood was on the wall behind it;
- At some point while on the scene YCSO personnel discovered that three light bulbs in the laundry room had been partially unscrewed so there was no light in the laundry room; no usable fingerprints were obtained from the light bulbs; but "unknown male" DNA was obtained from one or two of the bulbs; YCSO personnel also swabbed the door handle; on this item "unknown male" DNA was obtained which did not match the Defendant (from whom fingerprints and DNA samples were taken on July 3, 2008 by YCSO);
- At some point while on the scene, YCSO personnel found bike tire impressions in an area to the north and east of the residence in question, on a trail off Glenshandra Drive (a street north of the victim's residence) to a bush about 100 yards from the rear of the victim's property; there was photography of the tracks; expert witnesses cannot confirm the tracks to the Defendant's bike tires, but the tires are of the same make and type; these tires may be a common mountain bike tire; the expert can only state that the tire marks from the Defendant's bike would be

"similar tire tread patterns" to what was photographed without proper scale in the photography of the tracks, not that there was an identity;

- At some point while on the scene, YCSO personnel found shoeprint impressions in an area to the east or behind the residence of Carol Kennedy and other properties in the neighborhood; though law enforcement seized all the shoes found for the Defendant pursuant to a search warrant, none of the shoes matched the shoeprint characteristics; the shoeprints found were not of a type that matched bicycle shoes; nor was evidence presented in the hearing that would indicate a changing of shoes or the size of the shoes; testimony did refer to finding shoe impressions consistent with victim going running and that there was a witness who reported seeing Carol running at about 6:40 p.m. in a direction away from the house;
- While detectives were on the scene, Charlotte Democker, age 16, and her boyfriend, Jacob Janusek, arrived at the scene; detectives learned that Ruth Kennedy and Carol's brother John had been calling Steven Democker out of concern for Carol; and Charlotte, who lived with her father, had gone to her mother's house out of concern for her mother; Steven had indicated he didn't want to go because of the possible presence of "some other guy" there; Charlotte was advised by law enforcement officers that her mother was dead;
- Steven Democker reportedly had been on the phone with his daughter Charlotte on her arrival at the scene; he also spoke to her boyfriend Jacob after she dropped the phone on being so advised; prior to coming out to the scene, Steven also spoke with YCSO Detective Brown and asked what state the body was in; Steven Democker arrived at the scene later shortly after midnight and was questioned by detectives;
- Katie Democker, 20, the elder daughter of the parties, generally resided at college and, when college was not in session, resided with her mother; Katie had been taken to the airport in Phoenix the Saturday prior to July 2, (June 28), and was out of the country (Africa); both parents had seen her off at the airport;
- Steven Democker told YCSO officers that he had been on a bike ride on the Granite Mountain trail from about 6:30 p.m. to about 9 to 9:30 p.m. or "dark"; he said that he had gotten a flat tire; the trail is in an area about a mile and a half from the Bridle Path house; Democker also said his cell phone was powered off; testimony indicated the phone was off for about 2.5 hours before and 2.5 hours after the approximate time of the homicide; his bike was inspected and found to have a flat tire on the rear;
- Steven Democker is left-handed; in execution of the first search warrant, left handed Cleveland golf clubs were seen at his garage and a black nylon golf head cover for a #7 wood of a different brand was pictured in photographs taken; these items were not seized under the warrant; when a second search warrant was served mere hours later, the cover was not there; it was later provided by Defendant's attorney to YCSO; bike shoes were found during the search warrant execution;
- Law enforcement learned that Democker showered and washed the clothes he had been wearing during the ride; YCSO searched the Defendant's residence for evidence on clothes, showers and sinks, washer and dryer, and the drains or lint collector for blood or DNA evidence connecting Defendant to the scene; no blood, DNA or other physical evidence was found through these methods that would tie the Defendant to the victim or her residence; no

bloody clothing or footwear, nor blood or DNA from drains to indicate removal of victim's blood or otherwise connect Defendant to the scene of the crime;

- No physical evidence in the form of DNA samples or fingerprints of the Defendant was found at the scene of the crime;
- The personal and office computers of Steven Democker were seized and the evidence derived shows that someone used that computer during the four months before July 2, 2008, to search sites on the web pertaining to searches for such things as forensic evidence and how to make a homicide look like a suicide; evidence also showed a process instigated by Steven Democker to obtain chemicals or gases whose legitimate use is not readily apparent;
- Diary notes of the younger daughter and other information in August, 2008, indicated that Defendant was considering leaving the area and fleeing the potential charges, though he did not flee and was arrested on October 24, 2008, at his Phoenix office; the other information includes Defendant applying for a replacement passport and stating that it was lost when it was in fact in police custody, possession of a GPS device with roadmaps of Mexico, a motorcycle packed and ready for a trip; books were delivered to Defendant's Prescott office, ordered from his Amazon account and paid for with his American Express credit card, which carried titles suggesting how to disappear from public awareness or how to survive as a fugitive;
- The State on November 20, 2008 filed its amended notice of intent to seek the death penalty and specified the aggravating circumstances allegations on which it would rely.

Conclusions

It is of course legally cognizable that "proof evident or presumption great" can be established through circumstantial evidence. The testimony and evidence in this case clearly establishes that Carol Kennedy was murdered. The nature of the blows, at least seven in number, which were forcefully inflicted on her skull are indicative of a premeditated murder. The State has made its allegations of aggravating factors, at least one of which, subsection 13, is apparent to dispassionate judgment.

The constitution and law require the Court to begin with a presumption of innocence. And, as in a trial, the fact finder is not to speculate or guess about any fact. The evidence submitted must show that the proof is evident and presumption great that the accused committed a capital murder.

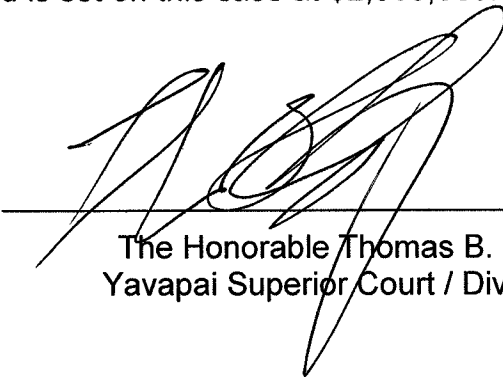
A motive does not seem apparent to the Court. The State has not established any clear motive. There was no history of violence or threat of violence between these people. The evidence received did not provide a motive for a homicide. Rather, there was testimony that the parties both saw their elder daughter off at the airport in Phoenix the prior weekend. No angry or ugly interaction was reported. Indeed, the contrary seemed the case. No financial motivation has been demonstrated. Though both parties had heavy debt and expenditures, the Defendant had significant income and prospects for continuing income. While Carol Kennedy appears from the evidence to have been dissatisfied with the results of the divorce decree, the same is not true of Steven

Democker. The testimony indicates that he was better off financially after the divorce than before it; the assertion that much of the community debt would end with Carol's death is not apparent; third party creditors could go after Steven Democker regarding community debt. The Court concludes that the Defendant had the opportunity to commit the offense due to his proximity to the scene of the crime during the time frame in which it must have occurred and the lack of independent alibi witnesses. In addition it appears that the Defendant had sought access to information via internet and books about forensics and, disturbingly, how to kill someone. The defense suggested the context for this information was that it was in preparation for a book. Further, after the focus was on Defendant as the apparently only suspect, the evidence indicated some planning efforts by him to flee. It is arguable that an innocent person might consider the same. In fact, one may note, Defendant did not flee. No truncheon or golf club or other weapon has been found. It is unclear that any person witnessed Defendant bring a golf club to the victim's residence, though he apparently made statements that he did. It must be acknowledged as well that there was time and opportunity for the perpetrator to get rid of physical evidence. The Defendant has made a number of false or misleading statements or inconsistent statements. But no physical evidence truly connects the Defendant to the scene. The best that might be said is that bike tires similar to those of Defendant's bicycle may have left impressions in the dirt. But such tires are not unique. No shoeprint expert has testified that any shoe impressions left in the dirt of the area are of a size or type consistent with any shoe of the Defendant. Nor has anyone identified with any precision when the impressions may have been left. No testimony was presented to show that any person saw a man resembling the Defendant at or near the scene at any time proximate to the occurrence of the offense.

Though the actions and statements of the Defendant have properly given rise to suspicion, more is required. The law demands that to hold a person accused of capital murder without bond the proof must be readily apparent, plain, indubitable, conclusive. Here, the prosecution has failed to establish that proof is evident or the presumption great that Defendant committed a capital murder. The Court is required by the law and constitution to set a bond. The Court has considered the evidence and sets a bond in conformity with the law and rules of procedure.

IT IS ORDERED therefore that the STATE'S REQUEST TO HOLD DEFENDANT IN CUSTODY WITHOUT BOND **is DENIED**. Bond is set on this case at \$2,500,000.00 cash or secured appearance bond through a bail bondsman.

DATED this 22nd day of January, 2009.



The Honorable Thomas B. Lindberg
Yavapai Superior Court / Division Six

cc: Mark K. Ainley, Esq., Office of the Yavapai County Attorney (**via e-mail this date**)
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Victim Services: **Attn. Marie Martinez**
Yavapai County Sheriff's Office (**Information Copy**)